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## LABOUR & E.S.I. DEPARTMENT

### NOTIFICATION

The 18th March 2015

No. 2471—IR(ID)—42/2012—LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 31st December, 2014 in I.D. Case No. 21/2012 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial disputes between the Management of M/s. B. R. G. Iron & Steel Co. (P) Ltd., At Kurunti, P.O. Kusponga, Dist. Dhenkanal and its Workman Shri Rabi Duman Singh was referred to for adjudication is hereby published as in the Schedule below :

### SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE. CASE No. 21/2012

Dated the 31st December 2014

#### *Present :*

Shri Saroj Kumar Sahoo, O.S.J.S. (Jr. Branch),  
Presiding Officer, Labour Court,  
Bhubaneswar.

#### *Between :*

The Management of . . . 1st Party—Managements

M/s B. R. G. Iron & Steel Co. (P) Ltd., through

1. The Director, Suit Nos. 403 & 405,  
Pl. No. 5, Block Opp. Sector-V, Salt Lake,  
Kolkata.
2. The Vice-President,  
M/s B.R.G. Iron & Steel Co. (P) Ltd.,  
At Kurunti, P.O. Kusponga, Dist. Dhenkanal.

*And*

Their Workman . . . 2nd Party—Workman

Shri Rabi Duman Singh,  
S/o Santosh Singh,  
At Randhawa Niwas (Near Dera Gurudwar),  
P.O. Dera P.S. Colliery,  
P.S. Colliery, Dist. Dhenkanal-759 103.

*Appearances :*

For the 1st party—Management . . . Shri B. K. Sahoo, Advocate

For the 2nd party—Workman . . . Shri S. K. Das, Advocate and Associates

**AWARD**

The Government of Odisha in Labour and Employment Department in exercise of powers conferred upon it by sub-section (5) of Section 12 read with Clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (for short 'the Act') have referred the following disputes for adjudication by this Court vide their Letter No. 4920—IR(ID) 42/12-LESI., dated the 26th June, 2012.

“Whether the action of the Management of M/s B.R.G. Iron & Steels Co.(P) Ltd., At Kurunti, P.O. Kusponga, Dist. Dhenkanal in terminating the services of Shri Rabi Duman Singh, Supervisor with effect from the 22nd July, 2011 is legal and/or justified ? If not, what relief he is entitled to ?”

1. The case of the second party workman is that the first party management is an Iron & Steel Company functioning in the district of Dhenkanal, since long. There are more 1000 employees of the first party organisation. The main function of the management Company is to produce Iron & Steel and earn huge profit. The management is headed by the Managing Director and managed by the Directors and other officials. The first party organisation is an industry as defined under the I.D. Act, 1947. The second party workman is a qualified person. On the 1st December, 2006 the second party was appointed as Supervisor (General) DRI under the first management in an interview. The main work of the second party is clerical in nature. He used to be engaged for House keeping and other allied works and worked under the Superior Officers. The second party has discharged his duty to the utmost satisfaction of the management continuously for a period of 5 years. During his service, in several occasions he demanded for change of his place of work as he is a dust allergic patient and asked for the higher post as he is more qualified and having professional degree of PGD (PMIR). The workman had also submitted the certificate issued by the Doctor in which he was advised to avoid dust. The management has also verified the certificate relating to his educational qualification. In view of such demands by the second party, the first party management terminated his service by way of refusal of employment on the 22nd July, 2011 without complying the principles of natural justice. The management did not issue any notice nor has paid notice pay to the second party before his termination. No termination order was issued to the second party. No domestic enquiry was conducted against the second party at all. No such notice was also issued to him. The first party management has not complied the provisions of the I.D. Act, 1947 at the time of termination of the services of the second party. After termination, the second party had filed his representation before the management for reinstatement, but in vain. The second party workman had also raised an Industrial Dispute before the labour machinery and the initiative taken by the labour machinery for conciliation failed. Accordingly, a report was submitted to the Govt. who has referred the industrial dispute between the parties to this Court for adjudication. At the time of termination the second party was getting Rs. 7250 per month towards his salary. He was a member under the E.P.F. and E.S.I. Scheme. The second party workman is entitled to reinstatement with full back wages.

2. In pursuance of notice issued by this Court the first party management has filed its written statement on the 19th November, 2012. On the 8th July, 2013 the first party management has failed the amended written statement as per the order of this Court, dated the 17th April, 2013. The case of the first party management is that the second party workman was working as Supervisor DRI and unauthorisedly remained absent from his duties for which a notice was issued to him on the 28th November, 2008 which was received by him on the 29th November, 2008. In spite of such receipt of notice he remained silent for which a show cause notice was issued to him vide Annexure-B. The first party management did not find any improvement on the performance of the second party for which a warning letter was issued to him bearing letter No.100, dated the 3rd December, 2008. As reported by Shri M. K. Pandey the second party workman refused to receive the said notice. Due to absence of the second party from his duty on the 3rd October, 2010 to 4th October, 2010 a notice was issued to him on the 6th October, 2010 in which he was warned for his indiscipline attitude towards his duties. Again the second party was found absent from his duty place 1.00 hours onwards on the 11th December, 2010 unauthorisedly for which a letter was issued to him on the 12th December, 2010 in which he was warned. Due to continuous poor performance of the second party workman he was warned and advised to improve his performance by a letter, dated the 11th February, 2011 and the 5th March, 2011. A show cause notice was issued to him on the 24th May, 2011 for his unauthorised absence. For his sleeping during working hours on the 7th July, 2011, another notice was also issued to him. Finally on the 20th July, 2011 a charge sheet was issued to the second party workman for his unruly behaviour, negligence in duty. The second party refused to receive the charge sheet. In the said charge sheet the workman had been asked to appear before the Board of Enquiry on 21st July, 2011. The second party did not appear before the Board of Enquiry for which after going through the past records and allegations made against the second party in the charge sheet the Board had decided to terminate the service of the second party. Accordingly, by letter, dated the 22nd July, 2011 the second party was terminated from his service. Due to Global downfall in Steel Sector, the Company is running at loss and the reinstatement of the workman will be a financial burden on the first party management. Hence, the second party workman is not entitled for any relief.

3. In view of the pleading of the parties, the following issues are framed.

#### ISSUES

- (i) Whether the enquiry conducted by the management if any, is fair and proper ?
- (ii) Whether the action of the management of M/s. B. R. G. Iron & Steels Co. P. Ltd., At Kurunti, P.O. Kusponga, Dist. Dhenkanal in terminating the services of Shri Rabi Duman Singh, Supervisor with effect from the 22nd July, 2011 is legal and/or justified ?
- (iii) If not, what relief he is entitled to ?

## FINDINGS

4. *Issue No. (i)*—On the 8th July, 2013 the first party management had filed a petition before this Court to decide the fairness of domestic enquiry as a preliminary issue which was allowed. Accordingly Issue No. 1 was taken up as a preliminary issue. The second party workman has been examined as W.W. 1 on preliminary issue. On the other hand the General Manager, Maintenance of the first party organisation is examined as M.W. 1 and Exts. A to F are marked on behalf of the first party. Ext. A is the application for candidature, dated the 22nd August, 2006. Ext. B is the photo copy of the letter, dated the 3rd December, 2008 issued to the second party by the first party. Ext. C is photo copy of letter, dated the 14th June, 2009. Ext. D is the photo copy of letter, dated the 7th July, 2011. Ext.E is the charge sheet, Ext.F is the proceeding of the enquiry. After scrutinising the evidence of the parties, order was passed by this Court on the 16th September, 2014 on preliminary issue i.e. “Whether the enquiry conducted by the management if any, is fair and proper ?” It was held by this Court that the domestic enquiry if any, conducted by the management was not fair and violative of principles of natural justice.

5. By the said order, dated the 16th September, 2014, the management was directed to produce his evidence on merit. In spite of several opportunities given to the first party management, no witness has been examined on behalf of the first party management on merit. The second party workman also did not chose to lead evidence.

6. *Issue No. (ii)*—Witnesses were examined on behalf of both the parties on preliminary issue. They were also cross-examined by the adversary. No witness has been examined by the management on merit although it was held by this Court under Issue No. (i) (preliminary) that the domestic enquiry if any, conducted by the management was not fair and violative of the principles of natural justice. The onus is on the first party management to prove that the termination of the service of the second party workman is legal and justified. From the evidence on record it is clear that the management has not produced the original documents relating to hence failing which it will be liable to pay interest at the rate of 10% per annum on the money due to the second party workman.

Dictated and corrected by me

SAROJ KUMAR SAHOO

31-12-2014

Presiding Officer  
Labour Court, Bhubaneswar

SAROJ KUMAR SAHOO

31-12-2014

Presiding Officer  
Labour Court, Bhubaneswar

By order of the Governor

M. NAYAK

Under-Secretary to Government